



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE NAMENDA INDIRECT PURCHASER :
ANTITRUST LITIGATION :
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15-CV-6549 (CM) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This Order resolves the letter motion at Dkt. 657 concerning Forest's attempts to claw back certain material designated privileged and confidential. Regardless of the merits of whether or not the material is protected, Plaintiff's counsel has not offered any excuse for failing to follow Chief Judge McMahon's rules regarding clawbacks, or for ignoring Forest's clawback demands. The challenge to Forest's assertion of privilege should have been made after complying with the clawback request. Accordingly, the Court grants Forest's requested relief: Plaintiff shall destroy all copies of the Clawed-Back Documents, withdraw the portions of their Opposition that reference Forest's information over which Forest asserts privilege, and file an amended Opposition deleting all references to the information Forest asserts is privileged.

That said, the Court has reviewed the material at issue and agrees with Plaintiff that not all of pages 777-789 are protected by privilege. Many of the statements are simply factual, and others are clearly primarily for business. The mere fact that the documents bear the legend "Privileged and Confidential" does not cloak them with privilege. Accordingly, by **February 25, 2021**, Forest shall file under seal a letter of no more than 3 pages explaining how and why the material at issue is privileged. Forest shall also at that time submit to Chambers email for *in camera* review a proposed redacted version (along with a fully unredacted version for comparison) of the document

that redacts only material that is truly subject to protection. By **March 1, 2021**, Plaintiff may file a letter of no more than three pages responding to Forest's letter.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', written over a horizontal line.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: February 19, 2021
New York, New York

Copies transmitted this date to all counsel of record.